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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 RUDY RIVERA,

8 Plaintiff(s),

Case No. 2:17-CV-2776 JCM (NJK)

ORDER

9 v.

10 DANIEL BOGDEN, et al.,

11 Defendant(s).
12

13 Presently before the court is defendant CoreCivic's¹ ("defendant") motion for summary
14 judgment. (ECF No. 47). Plaintiff Rudy Rivera ("plaintiff") filed a response (ECF No. 50),² to
15 which defendant replied (ECF No. 63).

16 **I. Background**

17 This is a *Bivens* civil rights action arising from plaintiff's protracted pretrial detention.
18 (ECF No. 1); *see also Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388
19 (1971). Plaintiff alleges that on November 25, 2014, defendants Daniel Bogden and Amber Craig,
20 who are both federal prosecutors, filed an indictment charging plaintiff with marijuana-related
21 offenses. (ECF No. 3). On that same day, a Nevada federal court issued a warrant for plaintiff's
22 arrest. *Id.* On October 26, 2015, federal marshals in the Eastern District of California arrested
23 plaintiff and placed him into custody. *Id.* On October 27, a magistrate judge ordered plaintiff to
24 be detained pending transfer to the District of Nevada for his initial detention hearing. *Id.*
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27 ¹ Corrections Corporation of America, CoreCivic's corporate predecessor, was the
defendant originally named in the complaint.

28 ² After extensive litigation (*see* ECF Nos. 51; 56; 58; 59; 60; 62; 64; 65; 66; 67; 68; 69;
70; 71), plaintiff filed an unsealed copy of his response with redacted exhibits (ECF No. 72).

1 Plaintiff further alleges that he was transferred to the Nevada Southern Detention Center
2 (“NSDC”) on or about November 4, 2015, where he remained in solitary confinement for the next
3 355 days. *Id.* During his detention, plaintiff repeatedly requested counsel and to be taken to a
4 judge, but defendant ignored his requests. *Id.* After almost a year, plaintiff was able to send a
5 letter to the federal public defender’s office, which ultimately caused plaintiff to appear before a
6 magistrate judge on October 24, 2016. *Id.* The magistrate judge released plaintiff on a personal
7 recognizance bond. *Id.* On February 1, 2017, the Nevada federal court dismissed with prejudice
8 the charges against plaintiff. *Id.*

9 Plaintiff also alleges that his solitary confinement caused him to experience extreme
10 agitation and suffer severe anxiety for which he had to receive medical treatment. *Id.* Plaintiff
11 describes his symptoms as “extreme and severe fright, shock, fear, horror, and emotional distress.”
12 *Id.*

13 On November 3, 2017, plaintiff filed his first amended complaint. (ECF No. 3). The
14 amended complaint raises eight causes of action: (1) violation of the Fourth Amendment, (2)
15 violation of substantive due process under the Fifth Amendment, (3) violation of procedural due
16 process under the Fifth Amendment, (4) violation of the right to counsel and access to courts under
17 the Sixth Amendment, (5) negligence, (6) negligent infliction of emotional distress, (7) intentional
18 infliction of emotional distress, and (8) false imprisonment. *Id.*

19 Plaintiff’s first, second, third, and fourth claims were brought against other defendants,
20 who were dismissed pursuant to the parties’ stipulation. (ECF Nos. 3; 35; 36). Plaintiff brings
21 only the fifth, sixth, seventh, and eighth causes of action against defendant. (ECF No. 3).
22 Defendant now moves for summary judgment on those claims. (ECF No. 47).

23 **II. Legal Standard**

24 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
25 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
26 show that “there is no genuine dispute as to any material fact and the movant is entitled to a
27 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
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1 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
2 323–24 (1986).

3 For purposes of summary judgment, disputed factual issues should be construed in favor
4 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
5 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts
6 showing that there is a genuine issue for trial.” *Id.*

7 In determining summary judgment, a court applies a burden-shifting analysis. The moving
8 party must first satisfy its initial burden. “When the party moving for summary judgment would
9 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
10 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has
11 the initial burden of establishing the absence of a genuine issue of fact on each issue material to
12 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)
13 (citations omitted).

14 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
15 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
16 element of the non-moving party’s case; or (2) by demonstrating that the nonmoving party failed
17 to make a showing sufficient to establish an element essential to that party’s case on which that
18 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
19 party fails to meet its initial burden, summary judgment must be denied and the court need not
20 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
21 60 (1970).

22 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
23 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
24 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
25 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
26 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
27 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
28 631 (9th Cir. 1987).

1 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
2 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
3 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
4 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
5 for trial. *See Celotex*, 477 U.S. at 324.

6 At summary judgment, a court's function is not to weigh the evidence and determine the
7 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*
8 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all
9 justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the
10 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
11 granted. *See id.* at 249–50.

12 **III. Discussion**

13 As an initial matter, the court finds that plaintiff's claims are not supported by his
14 placement in administrative segregation. Defendant has shown—and plaintiff admits—that
15 plaintiff's status as a "Norteño dropout" put him at risk of physical harm if he were put into the
16 general prison population. (ECF Nos. 47 at 4–6). Indeed, plaintiff would have been assaulted or
17 even killed on sight by either Sureño gang members or active Norteños. *Id.*

18 Because NSDC lacked a separate general population unit where Norteño dropouts could
19 be safely housed at the time of plaintiff's incarceration, housing plaintiff in administrative
20 segregation was a legitimate penological decision. To hold defendant liable for this decision runs
21 contrary to law, particularly because defendant would have certainly breached its duty to plaintiff
22 had it housed him in general population and allowed active gang members to assault him.

23 Thus, the court considers plaintiff's negligence, false imprisonment, intentional infliction
24 of emotional distress, and punitive damages claims regarding only his prolonged incarceration
25 without arraignment.

26 *A. False imprisonment*

27 Under Nevada law, false imprisonment is the "unlawful violation of the personal liberty of
28 another, and consists in confinement or detention without sufficient legal authority." Nev. Rev.

1 Stat. § 200.460. To establish a claim of false imprisonment, “it is necessary to prove that the
2 plaintiff was restrained of his or her liberty under probable imminence of force without any legal
3 cause or justification.” *Garton v. City of Reno*, 720 P.2d 1227, 1228 (Nev. 1986) (brackets
4 omitted). An individual’s “submission to the mere verbal direction of another, unaccompanied
5 by force or threats of any character, does not constitute false imprisonment.” *Lerner Shops of*
6 *Nevada, Inc. v. Marin*, 423 P.2d 398, 400 (Nev.1967).

7 An arrest or imprisonment pursuant to a valid legal process is generally not actionable
8 under false imprisonment. *Nelson v. Cty. of Las Vegas*, 665 P.2d 1141, 1143–44 (Nev. 1983).
9 However, imprisonment following a valid arrest becomes actionable when an officer “fails to take
10 the arrested person before a court or magistrate within a reasonable time or without unnecessary
11 delay.” *Id.* at 1144–45. When an otherwise lawful detention is unreasonable, only the officers
12 that participate in the detention, and their principals or employers, are liable for false
13 imprisonment. *Id.* at 1145.

14 Plaintiff does not argue that his initial indictment or arrest warrant were defective. Nor
15 does he dispute the initial validity of his imprisonment. Plaintiff’s false imprisonment claim stems
16 only from his prolonged incarceration without being arraigned before a magistrate judge.

17 The court finds itself at the crossroads of two Ninth Circuit decisions: *Oviatt By & Through*
18 *Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992) (“*Oviatt*”), and *Estate of Brooks ex rel. Brooks v.*
19 *United States*, 197 F.3d 1245 (9th Cir. 1999) (“*Brooks*”), *as amended* (Dec. 9, 1999). On one
20 hand, the *Oviatt* court held that a county inmate could sustain a false imprisonment claim against
21 the county after being held for 114 days without being arraigned. *See generally Oviatt*, 954 F.2d
22 1470. On the other hand, the Ninth Circuit distinguished *Brooks* from *Oviatt* and found that a
23 county was not liable for false imprisonment of a federal inmate. *See generally Brooks*, 197 F.3d
24 1245. The Ninth Circuit explained that “[w]hereas *Oviatt* was a case involving whether the left
25 hand knew what the right hand was doing, [*Brooks*] a case involving whether *my* left hand knows
26 what *your* right hand is doing.” *Id.* at 1248 (emphasis in original).

27 Here, the court finds that *Brooks* controls. The plaintiff in *Oviatt* was incarcerated in the
28 Multnomah County Detention Center; he sued Multnomah County and the Multnomah County

1 sheriff. 954 F.2d at 1472. The Multnomah County sheriff administered Multnomah County's
2 corrections division. *Id.* at 1473. Thus, liability fell squarely on Multnomah County and its
3 officials. These facts are not similar to the facts of this case.

4 In *Brooks*, although plaintiff was held in the county's jail, he was indisputably incarcerated
5 by and in the custody of the United States Marshals Service. 197 F.3d at 1248. "[T]he [c]ounty
6 held Brooks only so long as the Marshals Service directed it to, and no longer." *Id.* Thus, although
7 the county physically held Brooks for 12 days without an arraignment, the Ninth Circuit affirmed
8 the district court's Rule 12(b)(6) dismissal of the county because:

9 In the circumstances, the County's policies, whatever they may have
10 been, could not have altered what happened to Brooks. The County
11 was without authority either to bring Brooks before a federal
12 magistrate judge itself, because it cannot act for the United States,
13 or to release him, because it cannot ignore the state statute. Indeed,
14 Brooks does not allege that the County could have pursued either of
those courses. Therefore, the only causes of Brooks' prolonged
detention were the actions of the United States (which settled with
Brooks) and the state statute (which goes unchallenged). Causation
is, of course, a required element of a § 1983 claim. *See Oviatt v.*
Pearce, 954 F.2d 1470, 1474 (9th Cir.1992).

15 *Id.*

16 Here, as in *Brooks*, plaintiff was in the Marshals Service's custody, but was housed in the
17 facility defendants operate. The two biggest points of divergence between the facts in *Brooks* and
18 the instant case are (1) the mechanism by which the defendant had authority to hold the plaintiff
19 and (2) the length of detention. The county held Brooks pursuant to California Penal Code
20 § 4005(A), whereas defendant held plaintiff pursuant to a contract between defendant and the
21 Marshals Service. Admittedly, Brooks was detained for only 12 days; plaintiff here was detained
22 for an egregious 355 days.

23 The first difference does not affect the court's analysis. Whether it be by state statute or
24 by contract, defendant did not have legal authority to bring plaintiff before a federal magistrate
25 judge itself because it could not act for the United States. Similarly, defendant could not have
26 simply released an inmate it was instructed to incarcerate. As defendant argues:

27 It is further undisputed that [defendant], unlike Alameda County in
28 *Brooks*, had no independent legal authority to arrest or detain
anyone, including [p]laintiff; to determine who would be housed at

1 NSDC, and for how long; to determine whether or when a detainee
2 would be sent to court; or to order a detainee's release; and there is
3 no evidence that [defendant] maintained (or maintains) the type of
4 "linkages" with the District of Nevada courts that the Multnomah
5 County Sheriff's Department shared with the Multnomah County
6 courts. Federal statutes and regulations make USMS—not
7 [defendant]—the legal custodian of federal pretrial detainees with
8 authority to arrest, detain, and release them. *See* 18 U.S.C. § 4086
9 ("United States marshals shall provide for the safe-keeping of any
10 person arrested, or held under authority of any enactment of
11 Congress pending commitment to an institution."); 28 C.F.R. §
12 0.111(k) (providing that the USMS is to maintain "custody of
13 Federal prisoners from the time of their arrest by a marshal or their
14 remand to a marshal by the court, until the prisoner is committed by
15 order of the court to the custody of the Attorney General for the
16 service of sentence, otherwise released from custody by the court,
17 or returned to the custody of the U.S. Parole Commission or the
18 Bureau of Prisons").

19 (ECF No. 63 at 11). This argument finds further support in defendant's contract with the Marshals
20 Service, which provides that defendant "does not have a right of refusal and shall take all referrals
21 from the USMS." (ECF No. 50-6 at 13). Thus, defendant was obligated to accept and hold any
22 inmate in the Marshals Service's custody, and the Marshals Service had sole authority over the
23 incarceration and release of inmates from the facility.

24 Next, plaintiff notes the length of his confinement and relies on the *Oviatt* court's
25 observation that "the jail system had no internal procedures for keeping track of whether inmates
26 had received an arraignment or attended other scheduled court appearances." (ECF No. 50 at 17);
27 *Oviatt*, 954 F.2d at 1473. Thus, by plaintiff's estimation, defendant's failure to track and follow
28 up on plaintiff's detention amounts to false imprisonment. This argument, although compelling
on its face, is unavailing.

First, the court notes the Ninth Circuit's other admonishment in *Oviatt*: "**a local
governmental body** may be liable if it has a policy of inaction and such inaction amounts to a
failure to protect constitutional rights." *Oviatt*, 954 F.2d at 1474 (citing *City of Canton v.*
Harris, 489 U.S. 378, 388 (1989)) (emphasis added). Further, the *Oviatt* court was addressing the
jail's procedures when the jail was run by the county, the policies were determined by the county,
the county was charged with decision-making, the county arrested and detained the plaintiff, and
the county was attempting to blame the court.

1 Here, however, plaintiff was detained by the Marshals Service. The Marshals Service
2 certainly had a duty to ensure the constitutional rights of the inmates in its custody were protected.
3 The Marshals Service had the authority and obligation to bring plaintiff before a magistrate judge.
4 Whether the Marshals Service failed in its duty does not change the fact that defendant is not a
5 local governmental body. Defendant could not act for the United States and could not unilaterally
6 release plaintiff.

7 Accordingly, the court grants defendant's motion for summary judgment as to this claim.

8 *B. Plaintiff's remaining claims*

9 Plaintiff's remaining claims—negligence,³ intentional infliction of emotional distress,⁴ and
10 punitive damages⁵—are subject to the same analysis as his false imprisonment claim.

11 Because defendant could not act on behalf of the United States or contravene the Marshals
12 Service's decision to incarcerate plaintiff, they did neither had nor breached a duty to plaintiff.
13 Thus, plaintiff's negligence claim fails.

14 Similarly, defendant's conduct was not "extreme and outrageous," nor did it cause
15 plaintiff's distress; instead, the fault lies with the Marshals Service, which failed to bring plaintiff
16 before the court. Consequently, plaintiff's intentional infliction of emotional distress claim fails.

17 Finally, because plaintiff's underlying claims fail, he cannot sustain an action for punitive
18 damages.

19 Accordingly, the court grants defendant's motion for summary judgment.

20
21 ³ To state a claim for negligence under Nevada law, a plaintiff must allege four elements:
22 (1) a duty of care, (2) a breach of that duty, (3) causation, and (4) damages. *Turner v. Mandalay*
Sport Entm't, 180 P.3d 1172, 1175 (Nev. 2008).

23 ⁴ To state a claim for intentional infliction of emotional distress under Nevada law, a
24 plaintiff must allege: (1) that the defendant's conduct was extreme and outrageous; (2) that the
25 defendant either intended or recklessly disregarded the causing of emotional distress; (3) that the
26 plaintiff actually suffered severe or extreme emotional distress; and (4) that the defendant's
conduct actually or proximately caused the distress. *Olivero v. Lowe*, 995 P.2d 1023, 1025 (Nev.
2000). "[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency
and is regarded as utterly intolerable in a civilized community." *Maduikie v. Agency Rent-A-Car*,
953 P.2d 24, 26 (Nev. 1998) (quotation omitted).

27 ⁵ "[I]n an action for the breach of an obligation not arising from contract, where it is
28 proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud
or malice, express or implied," a plaintiff is entitled to recover punitive damages. Nev. Rev. Stat.
§ 42.005(1).

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IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion for summary judgment (ECF No. 47) be, and the same hereby is, GRANTED.

DATED March 13, 2020.

James C. Mahan
UNITED STATES DISTRICT JUDGE